

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

2012 MSPB 81

Docket No. DC-0353-06-0728-I-1

**Sandra R. Corum,
Appellant,**

v.

**United States Postal Service,
Agency.**

July 10, 2012

Douglas E. Sapp, Merrifield, Virginia, for the appellant.

William B. Neel, Esquire, Landover, Maryland, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mark A. Robbins, Member

OPINION AND ORDER

¶1 The appellant petitions for review of an initial decision that dismissed her appeal for lack of jurisdiction. For the following reasons, we GRANT the petition for review, REVERSE the initial decision, FIND that the appellant has shown by preponderant evidence that the agency arbitrarily and capriciously denied her restoration, and ORDER the agency to conduct a proper job search.

BACKGROUND

¶2 After sustaining a work-related injury on January 21, 1998, and receiving compensation for the accepted condition of “sprain of back, lumbar region” from

the Office of Workers' Compensation Programs (OWCP) for the position of Clerk/Special Delivery Messenger, the appellant applied for disability retirement in August 2003. Initial Appeal File (IAF), Tab 8, Subtabs 4g at 9, 16-17, and 4h at 50-57; IAF, Tabs 7, 22. The appellant indicated on her Applicant's Statement of Disability that "I suffer from frequent headaches (to include the neck) mostly upon arising from bed. Left shoulder pain that causes numbness in the arm. Lower back pain that extends to the left hip and radiates down the leg." IAF, Tab 8, Subtab 4g at 9. She indicated that she became disabled on July 9, 2001. *Id.* The Office of Personnel Management approved the application for disability retirement on October 18, 2003. IAF, Tab 8, Subtab 4e at 1, and Subtab 4i.

¶3 On November 25, 2005, the appellant filed an application for employment with the agency and a request for reinstatement. IAF, Tab 8, Subtab 4f. On December 7, 2005, the appellant filled out and submitted a "Request for Reinstatement" form indicating that she was applying to nine specific offices in the Northern Virginia area for a position as clerk or carrier. *Id.*, Subtab 4d. In response to the question, "Why do you wish to be reassigned/reinstated to the Postal Service?" the appellant responded, "I will always be a Postal worker. I feel I still have not [ac]complish[ed] my goal with the Post Office. I feel healthy again and very e[a]ger to get back to work." *Id.* at 2.

¶4 By letter dated May 11, 2006, the appellant informed the agency that she had recovered from her 1998 injury and was seeking a return to duty. *Id.*, Subtab 4c. The appellant indicated that she had sustained an injury while working at the Dulles Airport facility on January 21, 1998, that she was unable to return to work after May 5, 1998, and was "in and out" of work for 5 years before her decision to retire, that it took 5 years for her body to recover from the January 21, 1998 injury, that throughout that time she had been under a doctor's care, on a variety of medications, and receiving weekly therapy, that she was free from all medications and continuing to do daily exercises to keep her body

physically healthy and pain free, that she felt better than she had felt in years and was ready to return to work, and that she would like to return to work. *Id.*

¶5 By letter dated June 30, 2006, the agency advised the appellant that it had considered her “request for reinstatement to the Northern Virginia Performance Cluster,” that the agency decides “reinstatement requests” based on recommendations from immediate supervisors’ evaluations, attendance records, work history, discipline and safety records, review of Official Personnel Folders, and “current complement” requirements, and that “[d]ue to your past accident history it is not in the best interest of the Postal Service that you be reinstated to the Northern Virginia Performance Cluster.” *Id.*, Subtab 4b at 1. The agency attached a form indicating that the appellant’s request for reinstatement had been disapproved because she had had eleven accidents in 24 years. *Id.* at 2.

¶6 By letter dated July 14, 2006, concerning the appellant’s “Request for reinstatement,” the agency noted that the appellant had questioned in a telephone call the decision not to reinstate her, and that, as a former employee receiving a disability annuity, she was entitled to apply for “reemployment” in accordance with guidelines set forth in Pamphlet RI 80-13, Information for Disability Annuitants, which provides that, if a medical condition improves to the point where a disability annuitant wants to go back to work, he or she can apply for a job but “[t]he law does not require your former agency or any other Federal agency to offer you a position.” IAF, Tab 8, Subtab 4a at 1. The letter indicated that, if the physical or medical requirements of the position are similar to those of the position from which the disability annuitant retired or there is a reasonable question of the applicant’s ability to perform, the agency may conduct a pre-employment examination or require submission of medical documentation before appointment, according to the Civil Service Retirement System and Federal Employees’ Retirement System Handbook. *Id.* The letter further informed the appellant that “applicants must meet all qualifications of the position including current examinations (Handbook EL312),” and that “[s]ince you have been retired

for three (3) years your eligibility in the examinations has lapsed for postal employment, thus you would need to take Exam 473 for a clerk, mail handler, or city carrier position and Exam 460 for a rural carrier associate position prior to any further reinstatement consideration.” *Id.* Finally, the letter indicated that “[y]ou should also note requests for reemployment or reinstatement by former employees resu[l]ts in a review of the available postal records (safety/accident, attendance and supervisor evaluations),” and a “cursory review of our records indicate that you sustained numerous accidents as a postal employee and that based upon your safety record it would not be in the best interest of the Postal Service to reinstate you.” *Id.* at 2.

¶7 The appellant filed a July 25, 2006 Board appeal asserting that she had fully recovered and that the agency had failed to restore her to duty following a compensable injury. IAF, Tab 1 at 4. After informing the parties of the applicable burdens of proof, the administrative judge ordered the appellant to submit evidence and argument showing why the appeal should not be dismissed for lack of jurisdiction. IAF, Tab 3. After the parties filed their responses, IAF, Tabs 7-8, in which the appellant asserted that she had suffered an on-the-job injury to her back and had fully recovered from her injury, IAF, Tab 7 at 3, and after holding a hearing, the administrative judge dismissed the appeal for lack of jurisdiction in an April 12, 2007 initial decision, IAF, Tab 25, Initial Decision (ID) at 1, 3.

¶8 The administrative judge found that, although the appellant established by preponderant evidence that the agency separated her from employment based on a compensable injury, ID at 4-8, she did not establish that she was fully recovered, and therefore entitled to restoration, because her position required lifting of 70 pounds yet she was still under a 50-pound lifting restriction, and there were no significant changes in her most recent Magnetic Resonance Imaging (MRI) examination compared with the MRI examination upon which her disability retirement application had been approved, ID at 8-12. The administrative judge

further found that, although the appellant's documentation showed that she was recovered completely from a back injury, the appellant did not show that she was partially recovered because the medical documentation supporting her disability retirement application provided diagnoses of shoulder, neck, and back injuries, and the current medical documentation did not establish recovery in all three of those areas. ID at 12-14. The administrative judge also held that the agency's denial of restoration rights was not arbitrary and capricious because the appellant offered no objective medical evidence to the agency with her request for restoration to establish that she was fully or partially recovered and physically capable of performing any job duties. ID at 15. The administrative judge noted that, although the agency denied the appellant's restoration request based on her prior accident history with the agency, rather than on an assessment of her restoration rights, it was incumbent on the appellant to establish Board jurisdiction and she failed to do so. ID at 16. The initial decision informed the appellant that the initial decision would become final on May 17, 2007, unless she filed a petition for review by that date. ID at 17.

ANALYSIS

The appellant has shown that she timely filed her petition for review.

- ¶9 By letter postmarked October 31, 2011, the appellant wrote to the Clerk of the Board asking why she had not heard from the Board regarding the petition for review she had filed of the April 12, 2007 initial decision. Petition for Review (PFR) File, Tab 1 at 1. The appellant attached a PS Form 153, U.S. Postal Service Signature Confirmation Receipt, for a mailing addressed to the Clerk of the Board and postmarked May 1, 2007, and a PS Form 3817, Certificate of Mail, also for a mailing addressed to the Board and postmarked May 1, 2007. *Id.* at 2.
- ¶10 By letter dated December 6, 2011, the Clerk of the Board informed the appellant that it had no record of receipt of any petition for review filed by the appellant, and instructed the appellant to submit a copy of her previously-filed

petition for review and any documentation showing that she had timely filed a petition for review. PFR File, Tab 2. The appellant responded by submitting a petition for review dated May 1, 2007, in which she asserted that, although the administrative judge found that she failed to submit medical documentation regarding her current medical condition with her request for restoration, the agency's form did not ask for such medical documentation. PFR File, Tab 4 at 1. The appellant also claimed that she submitted a January 19, 2007 letter from her doctor indicating that she had recovered completely from her back injury, she may return to work with some restrictions because she cannot lift more than 50 pounds, and her January 12, 2007 MRI shows no significant changes. *Id.* at 8, 10. The appellant resubmitted with her petition for review the PS Forms 153 and 3817 she had submitted earlier. *Id.* at 13.

¶11 When a party shows by preponderant evidence that a pleading was properly addressed to the Board with postage prepaid and placed in the Postal Service mail stream, the Board will treat the pleading as filed on the date it was placed in the Postal Service mail stream, regardless of whether the Board receives it. *Freeze v. Department of Veterans Affairs*, [65 M.S.P.R. 149](#), 152 (1994). However, the party must present specific details concerning the mailing. *Id.*

¶12 Here, the appellant presented evidence showing that on May 1, 2007, she timely placed her petition for review in the Postal Service mail stream at the Compton Main Office, Compton, California, and used the proper address for the Clerk of the Board. PFR File, Tab 1 at 2. The evidence shows that her mailing included three 37-cent stamps, set forth her correct return address, and had the "Priority Mail Service" box checked by the Post Office. *Id.* Under these circumstances, we find that the appellant has met her burden of showing that she timely filed her petition for review. *See Baker-Mitchell v. U.S. Postal Service*, [87 M.S.P.R. 22](#), ¶¶ 6-12 (2000).

The Board has jurisdiction over this restoration appeal.

¶13 To establish jurisdiction over a restoration appeal under [5 C.F.R. § 353.304](#)(c), which applies to individuals who are partially recovered from a compensable injury, the appellant must prove by preponderant evidence: (1) absence due to a compensable injury; (2) sufficient recovery from the injury to return to duty on a part-time basis or in a less physically demanding position; (3) agency denial of a request for restoration; and (4) denial of restoration rendered arbitrary and capricious by agency failure to perform its obligations under [5 C.F.R. § 353.301](#)(d). *Bledsoe v. Merit Systems Protection Board*, [659 F.3d 1097](#), 1104 (Fed. Cir. 2011); *Latham v. U.S. Postal Service*, [117 M.S.P.R. 400](#), ¶ 10 (2012). Under [5 C.F.R. § 353.301](#)(d), agencies must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. [5 C.F.R. § 353.301](#)(d).

¶14 The administrative judge found that the appellant established by preponderant evidence that she was separated from employment based on a compensable injury, that her OWCP compensation ceased only upon her receipt of disability retirement benefits, and that an election of disability retirement benefits in lieu of OWCP benefits does not preclude restoration. ID at 4-8. The administrative judge also found that the agency denied the appellant's request for restoration. ID at 14-16. We find no error in these determinations.¹

¹ We also find no error in the administrative judge's determination that the appellant did not prove that she is fully recovered for purposes of 5 C.F.R. part 353. "Fully recovered" means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one. The continued receipt of disability retirement benefits does not preclude the appellant from exercising restoration rights if she can establish through other evidence

¶15 For purposes of 5 C.F.R. part 353, “partially recovered” means “an injured employee, though not ready to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements.” [5 C.F.R. § 353.102](#). Ordinarily, it is expected that a partially recovered employee will fully recover eventually. *Id.* The appellant submitted a November 17, 2006 letter from her doctor, G. Reza Mehryar, M.D., indicating that the appellant was in the office stating that she was interested in going back to work, that “[s]he is now symptom free,” that when examined she did not have any abnormal findings, that in December 2001 she had a very mild diffuse disc bulge “associated with small posterior central anular fissure at L5-S1 without central canal or neural foraminal stenosis,” that the appellant says she has improved so much that she wants to go to work, feels free of pain, and has no motor or sensory deficits, and that “I have no objections to her going back to work in the Post office.” IAF, Tab 12 at 2. The appellant also submitted a January 19, 2007 letter from Dr. Mehryar indicating that the appellant “has recovered completely from a back injury,” that she “may return to work and I have no objections to this,” that she “is under some restrictions, she cannot lift no more than 50 lbs.,” that she may walk, squat, stand, and sit for 8 hours “and up,” and that she “has gotten an MRI done on January 12, 2007” that shows “there were no significant changes, and she is doing very well, and have agreed for her to return back to full time employment at the United States Postal Service as a postal worker.” IAF, Tab 19 at 1.²

that she is fully recovered. *See Brumley v. Department of Transportation*, [46 M.S.P.R. 666](#), 671-74 (1991), *overruled in part on other grounds by Hasler v. Department of the Air Force*, [79 M.S.P.R. 415](#), 419-20 (1998). Nevertheless, such other evidence, as set forth below, shows that the appellant is not fully recovered because she has medical restrictions that prevent her from performing the full range of her regular duties.

² The agency submitted a Bargaining Unit Qualification Standard for City or Special Carriers, Distribution Clerks, Post Office Clerks, and Special Delivery Messengers. IAF, Tab 23. This document indicates that clerks “may be required to handle heavy

¶16 The administrative judge found that the appellant was not partially recovered because her medical documentation did not show recovery with respect to her neck and shoulder. ID at 12-14. As set forth above, however, the appellant's compensable injury was based solely on a "sprain of back, lumbar region." *See supra* ¶ 2. The appellant's doctor has indicated that she has recovered from this injury. In her disability retirement application, the appellant complained of frequent headaches "to include the neck" mostly upon arising from bed and left shoulder pain. IAF, Tab 8, Subtab 4g at 9. Even assuming that the appellant would have needed to also recover from injuries to her neck and shoulder in order to be entitled to restoration rights, there is no indication in the record that she based her disability retirement application on specific injuries to her neck and shoulder, as opposed to mere pain in those areas, presumably related to her underlying compensable back injury. *See id.* at 3 (indicating that the appellant's pain in her neck and shoulder was "episodic"). Similarly, there is no indication that the Office of Personnel Management granted the appellant's disability retirement application based on injuries to her neck and shoulder, as opposed to the back sprain for which she received OWCP benefits. *See* IAF, Tab 8, Subtab 4e. In any event, the medical documentation and the appellant's testimony establish that she is pain free in all areas, including her neck, shoulder, and back. *See* Hearing Tape 1, Side A.

sacks of letter mail or parcel post weighing up to 70 pounds," and that carriers and special delivery messengers "may be required to carry mail in shoulder satchels weighing as much as 35 pounds and to load and unload sacks of mail weighing up to 70 pounds." *Id.* at 1. Under "Physical Requirements," the document indicates that a physical examination will be required before appointment and that the examination must show that applicants are physically able to perform efficiently the duties of the position, which require arduous exertion involving prolonged standing, walking, and reaching, and may involve the handling of heavy sacks of mail. *Id.* This evidence supports the administrative judge's determination that the appellant did not prove that she is fully recovered.

¶17 We also note that Dr. Mehryar indicated that the January 12, 2007 MRI examination showed “no significant changes.” IAF, Tab 19 at 1. However, there is no indication in this document, nor is there any other evidence in the record, indicating that Dr. Mehryar was comparing that examination with any prior MRI examination upon which the appellant may have based her disability retirement, as opposed to merely indicating that the MRI showed no significant changes from his November 2006 examination which showed no abnormal findings. *See* IAF, Tab 12 at 2. If there had been some other condition, other than the back injury from which the appellant had recovered, that was limiting the appellant’s return to work, it is likely that Dr. Mehryar, who had treated the appellant since June 24, 1998, IAF, Tab 8, Subtab 4g at 3, and who based his opinion at least in part on objective medical evidence, i.e., the MRI results and an examination, would have so indicated.

¶18 In sum, we find, based on all of the evidence and testimony of record, that the appellant has shown that it is more likely true than untrue that, though not ready to resume the full range of her regular duties, she recovered sufficiently to return to part-time or light duty or another position with less demanding physical requirements. *See* [5 C.F.R. § 353.102](#); [5 C.F.R. § 1201.56\(c\)\(2\)](#) (a preponderance of the evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue).³

³ We note that under [5 C.F.R. § 339.301\(c\)](#), an agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions. In addition, an agency may offer a medical examination when the agency needs additional medical documentation to make an informed management decision, such as when an individual requests reemployment on the basis of full or partial recovery from a medical condition. [5 C.F.R. § 339.302](#). When an employee seeks restoration while still receiving disability retirement benefits, the Board will examine whether the agency acted reasonably in ascertaining the medical status of the employee and in providing the restoration rights warranted under the

¶19 Further, we find by a preponderance of the evidence that the agency's denial of the appellant's restoration request was rendered arbitrary and capricious by the agency's failure to perform its obligations under [5 C.F.R. § 353.301](#)(d). *See Sanchez v. U.S. Postal Service*, [114 M.S.P.R. 345](#), ¶ 14 (2010) (finding that evidence that the agency failed to search the commuting area as required by [5 C.F.R. § 353.301](#)(d) constituted a nonfrivolous allegation that the agency acted arbitrarily and capriciously in denying restoration). As set forth above, the agency did not make every effort to restore the appellant in the local commuting area, according to the circumstances in the case, and treat the appellant substantially the same as other disabled individuals. The agency did not treat the appellant's request as falling under 5 C.F.R. part 353, but instead focused on factors relating to her prior accident history and the criteria for individuals who retired on disability apparently based on non-compensable injuries. The agency did not search the local commuting area or even place the appellant on notice that medical documentation showing her partial recovery was needed.

¶20 Having found that the appellant established Board jurisdiction over this appeal by showing that she was absent due to a compensable injury, she recovered sufficiently from the injury to return to duty on a part-time basis or in a less physically-demanding position, the agency denied her request for restoration, and the denial was arbitrary and capricious because the agency failed to perform its regulatory obligations, we also find that she has proven her case on the merits. *See Latham*, [117 M.S.P.R. 400](#), ¶ 10 n.9 (a partially recovered individual who establishes Board jurisdiction over her restoration appeal automatically prevails on the merits).

¶21 The Board will not order the appellant restored to an assignment, nor will it order back pay based on such an assignment, because that would put the appellant

circumstances. *See Burke v. U.S. Postal Service*, [46 M.S.P.R. 683](#), 687 (1991), *overruled on other grounds by Hall v. Department of the Navy*, [94 M.S.P.R. 262](#) (2003).

in a better position than if the wrongful action had not occurred. *Cf. Hagan v. Department of the Army*, [99 M.S.P.R. 313](#), ¶ 8 (2005) (“A status quo ante remedy does not require that the appellant be placed in a better position than he was in at the time of the agency’s action.”). Rather, in a case like this one where the denial of restoration was arbitrary and capricious for lack of a proper job search, the Board has found that the appropriate remedy is for “the agency to conduct an appropriate search within the local commuting area retroactive to . . . the date of the appellant’s request for restoration, and to consider her for any suitable vacancies.” *Sapp v. U.S. Postal Service*, [82 M.S.P.R. 411](#), ¶ 21 (1999). The remedy of a retroactive job search will be sufficient to correct the wrongful action and substitute it with a correct one based on an appropriate search. However, it will not put the appellant in a better position than she was in before the wrongful action because it leaves open the possibility that the agency might still be unable to find an appropriate assignment available as of May 11, 2006.

ORDER

¶22 We ORDER the agency to conduct a proper job search retroactive to May 11, 2006, and to consider the appellant for any suitable assignments available at that time consistent with its restoration obligations under [5 C.F.R. § 353.301](#)(d).

¶23 We also ORDER the agency to pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Back Pay Act and/or Postal Service Regulations, as appropriate, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to calculate the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it carry out the Board’s Order. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to pay the appellant the undisputed amount no later than 60 calendar days after the date of this decision.

- ¶24 We further ORDER the agency to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and to describe the actions it took to carry out the Board's Order. The appellant, if not notified, should ask the agency about its progress. *See* [5 C.F.R. § 1201.181](#)(b).
- ¶25 No later than 30 days after the agency tells the appellant that it has fully carried out the Board's Order, the appellant may file a petition for enforcement with the office that issued the initial decision in this appeal if the appellant believes that the agency did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes that the agency has not fully carried out the Board's Order, and should include the dates and results of any communications with the agency. [5 C.F.R. § 1201.182](#)(a).
- ¶26 For agencies whose payroll is administered by either the National Finance Center of the Department of Agriculture (NFC) or the Defense Finance and Accounting Service (DFAS), two lists of the information and documentation necessary to process payments and adjustments resulting from a Board decision are attached. The agency is ORDERED to timely provide DFAS or NFC with all documentation necessary to process payments and adjustments resulting from the Board's decision in accordance with the attached lists so that payment can be made within the 60-day period set forth above.
- ¶27 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) ([5 C.F.R. § 1201.113](#)(c)).

NOTICE TO THE APPELLANT
REGARDING YOUR RIGHT TO REQUEST
ATTORNEY FEES AND COSTS

You may be entitled to be paid by the agency for your reasonable attorney fees and costs. To be paid, you must meet the requirements set out at Title 5 of the United States Code (5 U.S.C.), sections 7701(g), 1221(g), or 1214(g). The regulations may be found at [5 C.F.R. §§ 1201.201](#), 1201.202 and 1201.203. If

you believe you meet these requirements, you must file a motion for attorney fees WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION. You must file your attorney fees motion with the office that issued the initial decision on your appeal.

NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 ([5 U.S.C. § 7703](#)). You may read this law, as well as review the Board's regulations and other related material, at our website, <http://www.mspb.gov>. Additional information is available at the court's website, www.caafc.uscourts.gov. Of particular relevance is the court's

"Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board
Washington, D.C.



DFAS CHECKLIST

INFORMATION REQUIRED BY DFAS IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES OR AS ORDERED BY THE MERIT SYSTEMS PROTECTION BOARD

AS CHECKLIST: INFORMATION REQUIRED BY IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT
CASES

CIVILIAN PERSONNEL OFFICE MUST NOTIFY CIVILIAN PAYROLL OFFICE VIA COMMAND LETTER WITH THE FOLLOWING:

1. Statement if Unemployment Benefits are to be deducted, with dollar amount, address and POC to send.
2. Statement that employee was counseled concerning Health Benefits and TSP and the election forms if necessary.
3. Statement concerning entitlement to overtime, night differential, shift premium, Sunday Premium, etc, with number of hours and dates for each entitlement.
4. If Back Pay Settlement was prior to conversion to DCPS (Defense Civilian Pay System), a statement certifying any lump sum payment with number of hours and amount paid and/or any severance pay that was paid with dollar amount.
5. Statement if interest is payable with beginning date of accrual.
6. Corrected Time and Attendance if applicable.

ATTACHMENTS TO THE LETTER SHOULD BE AS FOLLOWS:

1. Copy of Settlement Agreement and/or the MSPB Order.
2. Corrected or cancelled SF 50's.
3. Election forms for Health Benefits and/or TSP if applicable.
4. Statement certified to be accurate by the employee which includes:
 - a. Outside earnings with copies of W2's or statement from employer.
 - b. Statement that employee was ready, willing and able to work during the period.
 - c. Statement of erroneous payments employee received such as; lump sum leave, severance pay, VERA/VSIP, retirement annuity payments (if applicable) and if employee withdrew Retirement Funds.
5. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.



NATIONAL FINANCE CENTER CHECKLIST FOR BACK PAY CASES

Below is the information/documentation required by National Finance Center to process payments/adjustments agreed on in Back Pay Cases (settlements, restorations) or as ordered by the Merit Systems Protection Board, EEOC, and courts.

1. Initiate and submit AD-343 (Payroll/Action Request) with clear and concise information describing what to do in accordance with decision.
2. The following information must be included on AD-343 for Restoration:
 - a. Employee name and social security number.
 - b. Detailed explanation of request.
 - c. Valid agency accounting.
 - d. Authorized signature (Table 63)
 - e. If interest is to be included.
 - f. Check mailing address.
 - g. Indicate if case is prior to conversion. Computations must be attached.
 - h. Indicate the amount of Severance and Lump Sum Annual Leave Payment to be collected. (if applicable)

Attachments to AD-343

1. Provide pay entitlement to include Overtime, Night Differential, Shift Premium, Sunday Premium, etc. with number of hours and dates for each entitlement. (if applicable)
2. Copies of SF-50's (Personnel Actions) or list of salary adjustments/changes and amounts.
3. Outside earnings documentation statement from agency.
4. If employee received retirement annuity or unemployment, provide amount and address to return monies.
5. Provide forms for FEGLI, FEHBA, or TSP deductions. (if applicable)
6. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.
7. If employee retires at end of Restoration Period, provide hours of Lump Sum Annual Leave to be paid.

NOTE: If prior to conversion, agency must attach Computation Worksheet by Pay Period and required data in 1-7 above.

The following information must be included on AD-343 for Settlement Cases: (Lump Sum Payment, Correction to Promotion, Wage Grade Increase, FLSA, etc.)

- a. Must provide same data as in 2, a-g above.
- b. Prior to conversion computation must be provided.
- c. Lump Sum amount of Settlement, and if taxable or non-taxable.

If you have any questions or require clarification on the above, please contact NFC's Payroll/Personnel Operations at 504-255-4630.